

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD EARL WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

January 30, 2014

No. 305917

Wayne Circuit Court

LC No. 76-002436-FC

Before: MURPHY, C.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

At a bench trial in 1977 in the former Detroit Recorder's Court, the court convicted defendant of first-degree criminal sexual conduct (CSC I), MCL 750.520b. Defendant failed to appear for his scheduled sentencing in 1978 and the trial court entered a capias ordering law enforcement to take him into custody. Defendant fled to Georgia, committed new crimes in that state, and then served a prison sentence in Georgia for those crimes from June 1981 to October 2008. In June 2011, defendant arrived in custody in Wayne County for his prior failure to appear at sentencing. On July 14, 2011, the trial court sentenced defendant to a prison term of 1 to 20 years. The trial court denied defendant's post-judgment motion to set aside the sentence and dismiss the case for lack of jurisdiction, and it also denied defendant's motion for a new trial or to settle the record. Defendant appeals as of right. We affirm.

I. JURISDICTION

Defendant initially challenges the trial court's denial of his motion to vacate the sentence. Defendant maintained that pursuant to constitutional speedy trial principles and MCL 771.1, the more than 33-year delay between his 1977 conviction and the imposition of sentence in 2011 divested the trial court of jurisdiction over the case. "Whether [a] defendant was denied his right to a speedy trial is an issue of constitutional law," which an appellate court considers de novo. *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006). Whether the trial court possessed personal jurisdiction to sentence defendant pursuant to MCL 771.1 involves a legal question of statutory interpretation, which this Court also considers de novo. *People v Levandoski*, 237 Mich App 612, 617-618; 603 NW2d 831 (1999); *People v Richards*, 205 Mich App 438, 444; 517 NW2d 823 (1994).

A. SPEEDY TRIAL

A criminal defendant's right to a speedy trial derives from the federal and state constitutions, US Const, Am VI; Const 1963, art 1, § 20, and from MCL 768.1. *People v Rivera*, 301 Mich App 188, 193; 835 NW2d 464 (2013). A defendant's sentencing comes "within the speedy trial guarantee." *People v Garvin*, 159 Mich App 38, 46; 406 NW2d 469 (1987).

In *Williams*, 475 Mich at 261-262, the Michigan Supreme Court reiterated the following relevant principles guiding a speedy trial assessment:

In determining whether a defendant has been denied the right to a speedy trial, we balance the following four factors: (1) the length of delay, (2) the reason for delay, (3) the defendant's assertion of the right, and (4) the prejudice to the defendant. Following a delay of eighteen months or more, prejudice is presumed, and the burden shifts to the prosecution to show that there was no injury. . . . [A] presumptively prejudicial delay triggers an inquiry into the other factors to be considered in the balancing of the competing interests to determine whether a defendant has been deprived of the right to a speedy trial. [Internal quotation marks and citations omitted.]

With respect to the reasons for delay, periods of delay requested by the defendant or otherwise attributable to a defendant usually weigh against him in the balancing analysis. *Vermont v Brillon*, 556 US 81, 90-91; 129 S Ct 1283; 173 L Ed 2d 231 (2009); *Garvin*, 159 Mich App at 46.

The more than 33-year period of delay in this case between defendant's conviction and sentence qualifies as excessive, absent some justification. *Garvin*, 159 Mich App at 46. Regarding the reasons for this delay, defendant does not dispute that he fled the state before his sentencing date and arrived in Georgia, where in February 1981 he committed an armed robbery, two counts of aggravated assault of a peace officer, and another aggravated assault, for which he was incarcerated in Georgia between June 30, 1981, and October 15, 2008, when he was released on parole. Defendant's flight from Michigan before his sentencing and subsequent 27-year incarceration in Georgia constituted a justification for most of the presentence delay. *Garvin*, 159 Mich App at 46 (finding that the defendant's presentence escape from prison and use of several aliases provided justification for the more than four-year delay before his sentencing date). Regarding the period between defendant's return to Michigan on parole in 2008 and his 2011 sentencing date, the record discloses no specific evidence that defendant contacted the Michigan Department of Corrections, the Wayne Circuit Court, the Wayne County Prosecutor's Office, or any other entity requesting sentencing or some other disposition of the 1977 CSC I conviction. Therefore, the entire period of delay is attributable to defendant.

Defendant disputes that any period of delay after 1982 should be attributable to him because he repeatedly asserted his right to a speedy trial. In support of his postjudgment motion, defendant submitted an affidavit in which he averred, in pertinent part:

4. That during my 1981 sentencing in my Georgia case, the Judge mentioned that I was wanted in Michigan.

5. That I served over 27 years in Georgia under the name Ronald Earl Williams.

6. That in 1982 I contacted the Wayne County Prosecutor's office, the Michigan Department of Corrections, the U.S. Justice Dept., and the U.S. District Court for the Eastern District of Michigan to request disposition of my 1977 Michigan CSC case.

7. The only response I received was from the US Justice Department, US Marshall. (See attachment 1, July 1, 1982 letter).

8. That I wrote several subsequent letters to the Wayne County Prosecutor and the Michigan Department of Corrections requesting disposition of the case, with no response.

The July 1982 letter that a United States Marshal in Macon, Georgia, sent to defendant in the Georgia prison stated:

We are in receipt of your letter dated June 25, 1982 concerning a Detainer lodged against you. We are pleased to advise you that the Detainer has been lifted against you. The charge was a warrant out of the state of Michigan for Unlawful Flight to Avoid Prosecution.

Defendant's failure to produce documentary evidence of any letters he reportedly sent to Michigan or any other relevant letters he received in the Georgia prison substantially undermines his contention that he asserted his right to a speedy trial.¹ Moreover, the lifting of the warrant at the time, assuming it occurred, did not necessarily mean that defendant could no longer be sentenced on the CSC I. Furthermore, assuming that defendant "contacted" Michigan authorities as claimed, the failure of those authorities to respond should have triggered an effort by defendant through counsel to engage in legal proceedings to resolve any issues in Michigan regarding the sentencing.

Defendant further suggests that after his 2008 return to Michigan on parole from his Georgia convictions, "he was stopped at the Canadian border in 2010 for a warrant," that he "was detained for several hours, then told it was a mistake, and released," and that he later "told his parole officer about the incident, . . . and she said she looked into it, and everything was fine, it was a mistake." But again, defendant offered no independent documentation in support of this assertion. Although he submitted an undated letter from his parole officer in Muskegon County, the letter mentions nothing about an inquiry into defendant's status after a border crossing issue.

¹ The parties did not dispute that the Wayne County Prosecutor's Office no longer possesses a file in LC No. 76-002436-FC. However, the record contains no indication that defendant sought substantiation of his letter writing claims from the Michigan Department of Corrections or correspondence by federal personnel in the Eastern District of Michigan.

Regarding prejudice, defendant contends that “he would have been serving his sentence concurrently with the Georgia matter had he been extradited to Michigan for sentencing when he wrote to various agencies in Michigan in 1982,” and that “he is not guilty.” We deem defendant’s claim of prejudice concerning potential concurrent sentencing insubstantial, at least in this case in which defendant did not produce adequate documentation supporting his alleged invocation of his speedy trial right, nor engage in any legal efforts to enforce his rights. With respect to defendant’s assertion of innocence because he and the victim engaged in consensual sex, defendant had his trial and was convicted; a sentencing hearing is not a venue for retrying a case.

In sum, although the delay of more than 33 years before defendant’s sentencing may be considered excessive, defendant caused the entirety of the delay, did not substantiate his averments that he repeatedly invoked his speedy trial right, did not make a legal effort to protect his rights, and did not demonstrate prejudice related to the presentence delay. A balancing of the speedy trial elements does not reveal a speedy trial violation. *Garvin*, 159 Mich App at 46-47. Thus, the trial court reached the correct result in denying defendant’s motion to vacate his sentence on the basis of a speedy trial violation. *People v King*, 297 Mich App 465, 475; 824 NW2d 258 (2012).

B. MCL 771.1

Defendant also argues that the lapse of an interval of more than one year between his conviction and sentence divested the trial court of jurisdiction to sentence him pursuant to MCL 771.1(2).

At the time of defendant’s sentencing in July 2011, MCL 771.1 (2) provided and still provides:

In an action in which the court may place the defendant on probation, the court may delay sentencing the defendant for not more than 1 year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant’s rehabilitation When sentencing is delayed, the court shall enter an order stating the reason for the delay The delay in passing sentence does not deprive the court of jurisdiction to sentence the defendant at any time during the period of delay.

The statute is triggered when the “court determines that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant suffer the penalty imposed by law[.]” MCL 771.1(1). Assuming the exception for CSC I convictions, MCL 771.1(1), was not applicable given the fact that the exception was added after defendant committed the CSC I, 1982 PA 470, there is no indication whatsoever that any delayed sentencing under the statute was ever contemplated in this case. Rather, defendant fled prior to sentencing and a warrant for his arrest was issued. MCL 771.1 has absolutely no applicability to the case at bar. Moreover, even if the statute was implicated, a loss of personal jurisdiction over a defendant occurs only if no good cause exists to justify “a delay of more than a year in sentencing.” *Richards*, 205 Mich App at 442. As more thoroughly

discussed in the speedy trial analysis, defendant's actions leading to the more than 33-year period of delay constituted good cause to delay his sentencing. Thus, the trial court reached the correct result in denying defendant's motion to vacate his sentence on the basis of a violation of MCL 771.1. *King*, 297 Mich App at 475.

II. MOTION TO SETTLE THE RECORD OR FOR NEW TRIAL

Defendant additionally insists that the trial court erred in denying his alternative motion for a new trial or settlement of the record. Defendant emphasizes that no trial transcripts exist, that the presiding judge at his trial and his defense attorney have both since died, and that the prosecutor's office no longer has a file in the case. Defendant insists that because he maintains his innocence of the crime but cannot remember the identities of the trial witnesses, the absence of a trial record prejudices his right to appeal his conviction. Criminal defendants possess a constitutional right to appeal their convictions. Const 1963, art 1, § 20; *People v Iacopelli*, 141 Mich App 566, 569; 367 NW2d 837 (1985). We review de novo "an issue of constitutional law." *Williams*, 475 Mich at 250.

The parties do not dispute that transcripts of defendant's bench trial no longer exist, that the prosecutor no longer possesses a file for LC No. 76-002436-FC, or that the judge who presided over the trial and defendant's trial counsel have both died. The parties agree that they cannot pursue a settlement of the record in conformity with MCR 7.210(B)(2). In *Iacopelli*, 141 Mich App at 567-568, the defendant argued that because no lower court transcripts existed and the parties could not settle their contents, "the loss of those records requires a peremptory reversal."

In *Iacopelli*, 141 Mich App at 568, this Court recognized that when records become unavailable, a presumption of regularity applies, pursuant to which "[d]oubts should be resolved in favor of the integrity, competence and proper performance of their official duties by the judge and the State's attorney." (Internal quotation marks and citations omitted.) This Court explained that "[t]he failure of the state to provide a transcript when, after good faith effort, it cannot physically do so, does not automatically entitle a defendant to a new trial," but a defendant could "offer proof in support of his assertions of what occurred when he was convicted." *Id.* (internal quotation marks and citation omitted). However, because the defendant in *Iacopelli* "failed to appear for sentencing and remained a fugitive until" nine years later, *id.* at 567, this Court concluded:

While we agree that a defendant has a constitutional right to appeal where, as here, he has compromised his position by his own misconduct, that right must be balanced. The state's responsibility for lost transcripts should diminish as the defendant-caused delay lengthens. When the delay is as extreme as it is here, and only the right to appeal is alleged . . . , we cannot reward defendant for being a fugitive for nine years.

Accordingly, we deny defendant's request for peremptory reversal or a new trial. [*Id.* at 569.]

In light of the facts that defendant caused a posttrial delay in this case more than three times longer than the delay in *Iacopelli*, and that defendant has identified no indisputable specific errors relative to the conviction, see *People v Carson*, 19 Mich App 1; 172 NW2d 211 (1969), the trial court reached the correct result in denying defendant's motion to settle the record or for a new trial. *King*, 297 Mich App at 475.

Affirmed.

/s/ William B. Murphy

/s/ Pat M. Donofrio

/s/ Karen M. Fort Hood